

NO.

S U P R E M E COURT,
OF THE STATE OF COLORADO.

Alfred Packer,
Plaintiff in Error,

VS.

The People of the State of
Colorado,
Defendants in Error.

ASSIGNMENT OF ERRORS.

JOHN R. SMITH,

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ATTORNEY FOR Plaintiff in Error.

6-15-98

I N T H E S U P R E M E C O U R T

O F T H E S T A T E O F C O L O R A D O .

Alfred Packer,	(
Plaintiff in Error,)	
vs.,	(<u>Error to the District Court</u>
)	<u>of Gunnison County.</u>
The People of the State of	(
Colorado,)	
Defendants in Error.)	

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ASSIGNMENT OF ERRORS.
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Now comes the said plaintiff in error and saith that in the record, proceedings, rulings, orders, decision, judgment and sentence of the court below in this cause there is manifest error, in this:

1st. The court below erred in denying the motion of the defendant below for his discharge from custody under the indictment for the alleged killing of Israel Swan (Folios 80-82, 277-287).

2nd. The court below erred in denying the motion of the defendant below for his discharge from custody under the indictment for the alleged killing of Shannon W. Bell (Folios 130-132, 278-287).

3rd. The court below erred in denying the motion of the defendant below for his discharge from custody under the indictment for the alleged killing of Frank Miller (Folios 171, 279-287).

4th. The court below erred in denying the motion of the defendant below for his discharge from custody under the indictment for the alleged killing of George Noon (Folios 216, 281-287).

5th. The court below erred in denying the motion of the

defendant below for his discharge from custody under the indictment for the alleged killing of James Humphrey (Folios 258-260, 283-287).

6th. The court below erred in consolidating the five separate indictments in said cause, and in directing that the five separate cases, numbers 237, 238, 239, 240 and 241 should be consolidated forthwith for trial, and that but one jury should be impaneled to pass upon the guilt or innocence of the said defendant with respect to the crime charged in each of the said indictments, because it appears in and by the record herein that as to one of said indictments the said defendant had been tried and thereon convicted, and that upon appeal to the Supreme Court of this State the judgment upon said indictment had been reversed, while upon three of the remaining indictments no proceedings whatever had been had for more than three years and more than five regular terms of the District Court then having regular jurisdiction of the said indictments had passed without without any proceedings whatever being had or taken thereon although this defendant was during all of said period in prison awaiting trial thereon and could have been tried upon said indictments at any and each and all of the said terms; and that with respect to the indictment of cause number 240, the indictment therein was returned against him at the April term, A.D. 1883, of the District Court within and for the County of Hinsdale in said State, and that thereafter five regular terms of the said District Court, exclusive of the term at which the said indictment was returned, were allowed by the People of the State of Colorado to pass without bringing the said defendant to trial upon the said indictment,

during all of which period the defendant was in custody and could have been tried upon the said indictment at any of the said terms; and that the delay in bringing him to trial upon each of the said indictments did not happen on his application, nor was he in any manner the cause of the delay, nor did he in any manner contribute to such delay (Folios 216-224).

7th. The court below erred in consolidating with the indictment as to which an appeal had been pending for more than five successive terms of said court the four indictments which had been pending in said court for more than three regular terms of said court without action thereon, and as to which the said defendant was entitled to his discharge.

8th. The court erred in not discharging the defendant from custody under the habeas corpus proceedings set out in the record herein as to the indictments in cases numbered 238, 239, 240 and 241, and each thereof.

9th. The court below erred in denying the motion of the defendant for his discharge from the indictment in each of the said causes, upon the ground that each of the said indictments showed that the offense charged was barred as to the prosecution thereof under the limitations declared by the statutes of the State of Colorado then in force, as appears upon the face of the said indictments and the record and the return thereof.

10th. The court below erred in instructing the jury by its fourth instruction, as follows: "The several indictments in this case were found & filed in court in April A D 1883. The statute provides that the defendant cannot be found guilty if these indictments were not found & filed in court within three years next

after the homicides. But the defendant is not entitled to the protection of this statute if he fled from justice before the expiration of three years after the homicides. If then the jury believe from the evidence that defendant did with intent to avoid prosecutions for the homicides alleged in the said indictments secrete himself from the officers of the law or leave the territory of Colorado with such intent, before the expiration of three years next after the death of said persons, & that he remained so absent or secreted until the end of said three years & was thereafter arrested and returned to this state for trial, then defendant is not entitled to the benefit & protection of said statute, & the fact that these prosecutions were not commenced within such time of three years is no defense." (Folio 337).

11th. The court below erred in instructing the jury by its sixth instruction, as follows: "The charges against defendant may be proved by circumstantial as well as by direct evidence. The law permits of either mode of proof; and also the charges may be proved in part by circumstantial & in part by direct evidence. Each kind of evidence should be weighed with great caution, and before finding defendant guilty the jury should be satisfied by the evidence of his guilt beyond a reasonable doubt; for if there is a reasonable doubt of such guilt he is entitled to acquittal. If then after a careful consideration of all the evidence in this case there is in the minds of the jury a reasonable doubt of defendant's guilt the verdict should be not guilty. By "reasonable doubt" is not meant an imaginary doubt or a possibility of doubt, but a doubt fairly arising out of the testimony." (Folio 339).

12th. The court below erred in defining to the jury what is

meant by a reasonable doubt, and not only failed to give to said jury a correct definition thereof, but in fact gave to said jury an erroneous, misleading, and seriously prejudicial definition thereof.

13th. The court below erred in its eighth instruction in limiting the jury to the finding of the defendant either guilty of voluntary manslaughter or not guilty.

14th. The court below erred in not giving to the jury and in refusing to give to the jury the first instruction requested by said defendant in the following language: "The law presumes every person charged with the commission of crime innocent until proved guilty beyond a reasonable doubt, and this presumption of innocence remains with him during every stage of the trial. And where a criminal charge is to be proved by circumstantial evidence, the proof must not only be consistent with the guilt of the defendant, but inconsistent with any other rational conclusion, before the jury will be authorized in bringing a verdict of guilty against him." (Folio 344).

15th. And the court below erred in not giving to the jury and in refusing to give to the jury the second instruction asked by the said defendant, in the language following: "It is not sufficient to authorize a verdict of guilty against the defendant, that a prima facie case has been made out by the people, even if no evidence countervailing the evidence for the people should have been introduced by the defendant, but the evidence in support of the indictment must be of such force and carry such conviction to your minds, even without the consideration of any opposing evidence, that you have no reasonable doubt of the guilt of the defendant." (Folio 345).

16th. And the court below erred in not giving to the jury and in refusing to give to the jury the third instruction asked by the said defendant, in the language following: "When independent facts are relied upon to identify the accused as the person who committed the crime charged, and taken together are regarded as a sufficient basis for a presumption of his guilt to a moral certainty or beyond a reasonable doubt, each material independent fact or circumstance necessary to complete such chain or series of independent facts tending to establish a presumption of guilt, should be established to the same degree of certainty as the main fact which these independent circumstances, taken together, tend to establish." (Folio 346).

17th. The court below erred in not giving to the jury and in refusing to give to the jury the fifth instruction asked by the said defendant, in the language following: "The jury are instructed, that the several indictments in this case were found and returned into the District Court of Hinsdale County in the month of April A.D. 1883, and that the Statute of this State provides, that unless the homicides were committed within three years next before the finding of the indictments, the defendant cannot be prosecuted unless he has fled from justice - And you are further instructed, that as the evidence shows these several homicides charged in the indictments to have been committed in March or April A.D. 1874, therefore unless you find that the defendant has fled from justice since the date of the homicide as proven, then you must acquit the defendant; and determining whether the defendant has fled from justice, you must determine what his intentions may have been for leaving the State, and in this particular, you are instructed, that the defendant in order that he

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should be fleeing from justice within the meaning of the law, must have wilfully intended to avoid the legal consequences of the homicide, for if he fled intending thereby to avoid mob violence or for any other purpose save and except to evade the legal consequences of the act, then he was not fleeing from justice and should be acquitted.

18th. The court below erred in not giving to the jury and in refusing to give to the jury the sixth instruction asked by the said defendant, in the language following: "Where a criminal charge is sought to be proved by circumstantial evidence, the proof must not only be direct, but also consistent with the guilt of the accused, and inconsistent with any other rational conclusion - it is not sufficient that the circumstances proved coincide with, account for, and therefore render probable the hypothesis to be established by the prosecution, but they must exclude to a moral certainty every hypothesis except the single one of guilt." (Folio 350).

19th. The court below erred in not sustaining the plea of the statute of limitations to each of the indictments in cases numbered 238, 239, 240 and 241, and in not discharging the defendant under said indictments.

20th. The court below erred in trying the defendant upon the indictments in cases numbered 238, 239, 240 and 241, for the reason that the only offense for which the defendant could be tried under said indictments being for manslaughter, and the same and each thereof were insufficient and bad upon their face in that they showed affirmatively that the offense charged was committed more than three years before the finding of said indictments, and did

not state that the defendant had fled from justice or in any manner brought himself within the exception of the statute of limitations of the State of Colorado.

21st. The court below erred in considering and ruling that the said indictments were as to the statute of limitations an indictment for murder, and that the defendant could be tried thereunder, although it was not alleged in said four indictments or either of them that the defendant had in any manner brought himself within the exception to the statute.

WHEREFORE, The Plaintiff in Error prays that in all things the judgment and sentence thereon in the court below may be in all things reversed, set aside and held for naught, and that he may be discharged under the judgment and direction of this Court from and under all of the indictments in the record below contained.

John R. Smith
Attorney for Plaintiff in
Error.